

AMENDED IN SENATE APRIL 28, 2014
AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1026

Introduced by Senator Vidak

February 14, 2014

An act to amend Sections 5705, 5710, and 6822 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1026, as amended, Vidak. Common interest developments: assessment collection: notice.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments, except for those developments limited to industrial or commercial uses, which are governed by the Commercial and Industrial Common Interest Development Act. Each act requires specified procedures for the collection of delinquent assessments, including, but not limited to, a procedure for giving notice to an owner of a separate interest of collection actions.

This bill ~~would allow~~, *would, until January 1, 2019, authorize*, under certain circumstances, an association governed by either act to serve an owner or owner's representative with notice of a foreclosure action to collect delinquent assessments by posting a copy of the notice on the owner's separate interest in a manner most likely to give actual notice to the party to be served and mailing a copy of the notice, as specified. *The bill would also, until January 1, 2019, authorize, under certain circumstances the notice of foreclosure to be published.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5705 of the Civil Code is amended to
2 read:

3 5705. (a) Notwithstanding any law or any provisions of the
4 governing documents to the contrary, this section shall apply to
5 debts for assessments that arise on and after January 1, 2006.

6 (b) Prior to initiating a foreclosure on an owner's separate
7 interest, the association shall offer the owner and, if so requested
8 by the owner, participate in dispute resolution pursuant to the
9 association's "meet and confer" program required in Article 2
10 (commencing with Section 5900) of Chapter 10 or alternative
11 dispute resolution as set forth in Article 3 (commencing with
12 Section 5925) of Chapter 10. The decision to pursue dispute
13 resolution or a particular type of alternative dispute resolution shall
14 be the choice of the owner, except that binding arbitration shall
15 not be available if the association intends to initiate a judicial
16 foreclosure.

17 (c) The decision to initiate foreclosure of a lien for delinquent
18 assessments that has been validly recorded shall be made only by
19 the board and may not be delegated to an agent of the association.
20 The board shall approve the decision by a majority vote of the
21 directors in an executive session. The board shall record the vote
22 in the minutes of the next meeting of the board open to all
23 members. The board shall maintain the confidentiality of the owner
24 or owners of the separate interest by identifying the matter in the
25 minutes by the parcel number of the property, rather than the name
26 of the owner or owners. A board vote to approve foreclosure of a
27 lien shall take place at least 30 days prior to any public sale.

28 (d) (1) The board shall provide notice by personal service in
29 accordance with the manner of service of summons in Article 3
30 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
31 2 of the Code of Civil Procedure to an owner of a separate interest
32 who occupies the separate interest or to the owner's legal
33 representative, if the board votes to foreclose upon the separate
34 interest. The board shall provide written notice to an owner of a
35 separate interest who does not occupy the separate interest by
36 first-class mail, postage prepaid, at the most current address shown
37 on the books of the association. In the absence of written
38 notification by the owner to the association, the address of the

owner's separate interest may be treated as the owner's mailing address.

(2) If after reasonable diligence the notice is not able to be served on an owner or owner's representative in accordance with the manner of service set forth in paragraph (1), the association may post a copy of the notice on the owner's separate interest in a manner most likely to give actual notice to the party to be served and mail a copy of the notice by first-class mail to all known addresses of the owner or owner's representative. If the association effects service by posting and mailing in accordance with this paragraph, the association shall ~~record~~ *provide to the owner or owner's representative* a declaration of diligence, specifying in reasonable detail the efforts made to effect service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The declaration shall contain the name, address, and telephone number of the association, as well as the legal description and assessor's parcel number of the separate interest subject to the notice. *The declaration shall be sent by first-class mail to all known addresses of the owner or owner's representative.*

(3) *If after reasonable diligence the notice is not able to be served on an owner or owner's representative in accordance with the manner of service set forth in paragraph (1), and after posting and mailing a copy of the notice and providing a declaration as set forth in paragraph (2), the association may publish the notice once per week for three consecutive calendar weeks, and except for the reference to the time period, shall otherwise conform to the requirements of paragraph (2) of subdivision (b) of Section 2924f.*

(4) *For purposes of this subdivision, "diligence" means an attempt to effect personal service by a process server who is not affiliated with the common interest development, the homeowners association, or its managers, attorneys, or agents, registered pursuant to Section 22350 of the Business and Professions Code, on three separate days at three different times of day, including at least one attempt after normal business hours. At least one attempt at personal service shall occur on a weekday, and at least one attempt shall occur on a weekend day.*

(5) *Paragraphs (2) to (4), inclusive, of this subdivision shall become inoperative on January 1, 2019.*

1 SEC. 2. Section 5710 of the Civil Code is amended to read:

2 5710. (a) Any sale by the trustee shall be conducted in
3 accordance with Sections 2924, 2924b, and 2924c applicable to
4 the exercise of powers of sale in mortgages and deeds of trust.

5 (b) (1) In addition to the requirements of Section 2924, the
6 association shall serve a notice of default on the person named as
7 the owner of the separate interest in the association's records or,
8 if that person has designated a legal representative pursuant to this
9 subdivision, on that legal representative. Service shall be in
10 accordance with the manner of service of summons in Article 3
11 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
12 2 of the Code of Civil Procedure. An owner may designate a legal
13 representative in a writing that is mailed to the association in a
14 manner that indicates that the association has received it.

15 (2) If after reasonable diligence the notice is not able to be
16 served on an owner or owner's representative in accordance with
17 the manner of service set forth in paragraph (1), the association
18 may post a copy of the notice on the owner's separate interest in
19 a manner most likely to give actual notice to the party to be served
20 and mail a copy of the notice by first-class mail to all known
21 addresses of the owner or owner's representative. If the association
22 effects service by posting and mailing in accordance with this
23 paragraph, the association shall ~~record~~ *provide to the owner or*
24 *owner's representative* a declaration of diligence, specifying in
25 reasonable detail the efforts made to effect service in accordance
26 with the manner of service of summons in Article 3 (commencing
27 with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code
28 of Civil Procedure. The declaration shall contain the name, address,
29 and telephone number of the association, as well as the legal
30 description and assessor's parcel number of the separate interest
31 subject to the notice. *The declaration shall be sent by first-class*
32 *mail to all known addresses of the owner or owner's representative.*

33 (3) *If after reasonable diligence the notice is not able to be*
34 *served on an owner or owner's representative in accordance with*
35 *the manner of service set forth in paragraph (1), and after posting*
36 *and mailing a copy of the notice and providing a declaration as*
37 *set forth in paragraph (2), the association may publish the notice*
38 *once per week for three consecutive calendar weeks, and except*
39 *for the reference to the time period, shall otherwise conform to*

1 *the requirements of paragraph (2) of subdivision (b) of Section*
2 *2924f.*

3 *(4) For purposes of this section, “diligence” means an attempt*
4 *to effect personal service by a process server who is not affiliated*
5 *with the common interest development, the homeowners*
6 *association, or its managers, attorneys, or agents, registered*
7 *pursuant to Section 22350 of the Business and Professions Code,*
8 *on three separate days at three different times of day, including*
9 *at least one attempt after normal business hours. At least one*
10 *attempt at personal service shall occur on a weekday, and at least*
11 *one attempt shall occur on a weekend day.*

12 *(5) Paragraphs (2) to (4), inclusive, of this subdivision shall*
13 *become inoperative on January 1, 2019.*

14 (c) The fees of a trustee may not exceed the amounts prescribed
15 in Sections 2924c and 2924d, plus the cost of service for either of
16 the following:

17 (1) The notice of default pursuant to subdivision (b).

18 (2) The decision of the board to foreclose upon the separate
19 interest of an owner as described in subdivision (d) of Section
20 5705.

21 SEC. 3. Section 6822 of the Civil Code is amended to read:

22 6822. (a) Any sale by the trustee shall be conducted in
23 accordance with Sections 2924, 2924b, and 2924c applicable to
24 the exercise of powers of sale in mortgages and deeds of trust.

25 (b) (1) In addition to the requirements of Section 2924, the
26 association shall serve a notice of default on the person named as
27 the owner of the separate interest in the association’s records or,
28 if that person has designated a legal representative pursuant to this
29 subdivision, on that legal representative. Service shall be in
30 accordance with the manner of service of summons in Article 3
31 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
32 2 of the Code of Civil Procedure. An owner may designate a legal
33 representative in a writing that is mailed to the association in a
34 manner that indicates that the association has received it.

35 (2) If after reasonable diligence the notice is not able to be
36 served on an owner or owner’s representative in accordance with
37 the manner of service set forth in paragraph (1), the association
38 may post a copy of the notice on the owner’s separate interest in
39 a manner most likely to give actual notice to the party to be served
40 and mail a copy of the notice by first-class mail to all known

1 addresses of the owner or owner's representative. If the association
2 effects service by posting and mailing in accordance with this
3 paragraph, the association shall ~~record~~ *provide to the owner or*
4 *owner's representative* a declaration of diligence, specifying in
5 reasonable detail the efforts made to effect service in accordance
6 with the manner of service of summons in Article 3 (commencing
7 with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code
8 of Civil Procedure. The declaration shall contain the name, address,
9 and telephone number of the association, as well as the legal
10 description and assessor's parcel number of the separate interest
11 subject to the notice. *The declaration shall be sent by first-class*
12 *mail to all known addresses of the owner or owner's representative.*

13 (3) *If after reasonable diligence the notice is not able to be*
14 *served on an owner or owner's representative in accordance with*
15 *the manner of service set forth in paragraph (1), and after posting*
16 *and mailing a copy of the notice and providing a declaration as*
17 *set forth in paragraph (2), the association may publish the notice*
18 *once per week for three consecutive calendar weeks, and except*
19 *for the reference to the time period, shall otherwise conform to*
20 *the requirements of paragraph (2) of subdivision (b) of Section*
21 *2924f.*

22 (4) *For purposes of this section, "diligence" means an attempt*
23 *to effect personal service by a process server who is not affiliated*
24 *with the common interest development, the homeowners*
25 *association, or its managers, attorneys, or agents, registered*
26 *pursuant to Section 22350 of the Business and Professions Code,*
27 *on three separate days at three different times of day, including*
28 *at least one attempt after normal business hours. At least one*
29 *attempt at personal service shall occur on a weekday, and at least*
30 *one attempt shall occur on a weekend day.*

31 (5) *Paragraphs (2) to (4), inclusive, of this subdivision shall*
32 *become inoperative on January 1, 2019.*

33 (c) The fees of a trustee may not exceed the amounts prescribed
34 in Sections 2924c and 2924d, plus the cost of service for the notice
35 of default pursuant to subdivision (b).